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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1943.

No. **361**

BARTOL SIKICH, EMMA SIKICH AND TRANSFER  
REALTY CO., INC.,

*Petitioners,*

*vs.*

GLENN W. SPRINGMANN, AS TRUSTEE, IN THE MATTER  
OF BARTOL SIKICH, VOLUNTARY BANKRUPT,

*Respondent.*

**PETITION FOR WRIT OF CERTIORARI TO THE  
SUPREME COURT OF THE STATE OF INDIANA  
AND BRIEF IN SUPPORT THEREOF.**

OSCAR B. THIEL,  
*Attorney for Petitioners,*  
504 Broadway,  
Gary, Indiana.

M. WM. MALCZEWSKI,  
738 Broadway,  
Gary, Indiana,  
*Of Counsel.*



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*To the Honorable Harlan Fiske Stone, Chief Justice of  
the United States, and the Associate Justices of the  
Supreme Court of the United States:*

**PETITION FOR WRIT OF CERTIORARI.**

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The petitioners, Bartol Sikich, Emma Sikich and Transfer Realty Company, Inc., present this, their separate and several petition for a Writ of Certiorari to be directed to the Supreme Court of the State of Indiana to review a judgment rendered on the 20th day of May, 1943, on which a rehearing was denied on the 16th day of June, 1943, affirming a judgment of the Circuit Court of Porter County, in the State of Indiana, in favor of the respondent and against each of these petitioners.

The original action was on a complaint (17-36) filed in the Lake Superior Court on the 1st day of November, 1936 (16). By regular proceedings the cause was sent to the Porter Circuit Court for trial (42-44). Each of the petitioners filed an answer in general denial to the complaint (41).

The cause was first submitted to the court for trial on the 21st day of June, 1937 (64). Evidence was heard at intermittent periods from June 21, 1937 to July 25, 1941 (142-144), the time consumed covering a total of 91 days. Under the Indiana code (Burn's Ann. Stat. 1933, Sec. 2-2102) the court had been requested to make special findings of fact and state its conclusions of law thereon (69), and at the close of the evidence, the court did make 70 findings of fact (144-293) and stated 20 conclusions of law (294-304) and then rendered a judgment against petitioners, Bartol Sikich and Emma Sikich (305-317); the finding and judgment covering 173 pages of the record (144-317).

Summarized, the finding and judgment is that the petitioner, Bartol Sikich, was the owner of 25 parcels of real estate on the 8th day of February, 1932, and that all of these properties, although conveyed to the petitioner, Transfer Realty Company, Inc., on February 8, 1932; were still the properties of Bartol Sikich on the 1st day of June, 1935, on which date he was adjudicated a voluntary bankrupt. It was on these findings that the court rendered a judgment against the petitioners, Bartol Sikich and Emma Sikich in the sum of \$17,411.80, and also adjudged that respondent was the owner of 25 parcels of real estate to which the bankrupt had title on February 8, 1932; and on which date the title thereto was transferred to the corporate petitioner, Trasfer Realty Company, Inc. An appeal was regularly taken to the Supreme Court of Indiana where the judgment of the trial court was affirmed, on the 20th day of May, 1943 (370-374). A petition for re-

hearing was filed, as provided by the rules of the Supreme Court of Indiana on the 8th day of June, 1943 (375-387), and on the 16th day of June, 1943, this petition for rehearing was by the Supreme Court of Indiana denied (388-393).

The petitioner has brought before this court on this application, the record in the Supreme Court of Indiana, consisting of a transcript of all order book entries, the assignment of errors in the Supreme Court of Indiana, the Complaint filed by the plaintiff in the Lake Superior Court, the proceedings in connection with the change of venue to Porter County, the answer filed by the defendant, the proceedings had in the court below, the special findings of the fact; and conclusions of law and the judgment in the court below, the opinion of the Supreme Court of Indiana affirming the judgment, the petition for rehearing filed by these petitioners, and the order overruling the petitions for rehearing, the modified opinion; all certified by the Clerk of the Supreme Court of Indiana. This application is made within the time limit prescribed by the rules of this court.

## STATEMENT.

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The following is a summary and short statement of the matters involved and the general reasons relied on for the allowance of the writ.

The petitioner, Bartol Sikich, was adjudicated a voluntary bankrupt, in the United States District Court for the Northern District of Indiana in the Hammond Division thereof, on the 1st day of June, 1935.

On the 8th day of February, 1932, the petitioner, Bartol Sikich, was the owner of 25 certain pieces of real estate in the City of Gary, Indiana. Shortly prior thereto, the petitioner, Bartol Sikich, and the petitioner, Emma Sikich, who is the wife of Bartol Sikich, had caused to be organized, the petitioner, Transfer Realty Company, Inc. This corporation was regularly incorporated under the laws of the State of Indiana on February 1, 1932; [Fact #4 (146-150)] and on the 8th day of February, 1932, the petitioner, Bartol Sikich, his wife, Emma Sikich, joining therein, conveyed to the petitioner, Transfer Realty Company, Inc., said parcels of real estate; [Fact #4 (104)] the petitioner, Transfer Realty Company, Inc., after its organization, also engaged in the purchase of mortgages, notes, and other evidences of indebtedness secured by mortgages on real estate [Facts #15 to 60 (164-253)], borrowed money [Fact #14 (163)], and the corporation petitioner, was engaged in such business at the time the petitioner, Bartol Sikich, was adjudicated a voluntary bankrupt; and was in existence at the time the court rendered judgment on July 25, 1941; [Fact #70 (293)].

The respondent herein, Glenn W. Springmann, as trustee, etc., was duly appointed as trustee of the estate of the petitioner, Bartol Sikich, by the United States Dis-

trict Court on October 17, 1935 [Fact #3 (144)]. On the 1st day of November, 1936, he filed his complaint in the Lake Superior Court, a state court of general jurisdiction in the State of Indiana, against these petitioners alleging that the several pieces of real estate were conveyed to the petitioner corporation for no consideration whatever, except the stock of the corporation (18-20) and that the purchase of the notes and mortgages was made with the money of Bartol Sikich (20-21); that the petitioner, Transfer Realty Company, Inc., was not a corporation in fact, but was the *alter ego* of the petitioner, Bartol Sikich; that it had no separate legal entity and was actually the petitioner, Bartol Sikich (21-22; 35).

Whether the state court had jurisdiction of the subject matter was raised by a motion to dismiss at the close of plaintiff's case (86-88), was renewed by a separate motion at the close of all of the evidence (102-104); was urged on appeal in the Supreme Court of Indiana (11), and is again being urged here.

The Porter Circuit Court made 70 findings of fact but nowhere in these findings is there any finding that the conveyance of the real estate by the petitioner, Bartol Sikich, to the petitioner, Transfer Realty Company, Inc., was fraudulent as to Bartol Sikich's present or future creditors or was a fraud upon anyone. The court's judgment apparently being upon the theory that the corporate petitioner had no independent existence or identity. This theory being sustained by a personal judgment only, against Bartol Sikich and Emma Sikich, which personal judgment is based upon the income of the properties conveyed by Bartol Sikich to the Transfer Realty Company, Inc.

The Supreme Court of Indiana, in sustaining the jurisdiction of the state *nisi prius* court, held that the prop-

erties having been conveyed to a separate legal entity which claimed to be the owner of said properties, the state court had jurisdiction.

The question whether the trustee in bankruptcy could recover from a separate legal entity, property conveyed to such entity by a voluntary bankrupt more than four months prior to the bankrupt's adjudication, there being no showing that the conveyance was made "with intent and purpose on his (Bartol Sikich's) part to hinder, delay or defraud his creditors or any of them"; or "in fraud of his creditors"; and in consideration of the stock in the corporation; was duly presented to the trial court by motion to find for these petitioners (87, 88; 103, 104), by exceptions to conclusions of law (304), was necessarily passed upon in the court's conclusions of law and judgment, and was urged by assignments of error in the Supreme Court of Indiana (11-13).

## QUESTIONS PRESENTED.

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These petitioners say that the Supreme Court of the State of Indiana is the highest court in law or equity in the State of Indiana, and that the judgment appealed from, is a final judgment, and presents federal questions of moment in this case, namely:

### I.

Whether the state court of Indiana had jurisdiction over the estate and person of the petitioner, Bartol Sikich, a voluntary bankrupt, on a petition, finding and judgment, which proceeded upon the theory that the petitioner, Transfer Realty Company, Inc., was the *alter ego* of the petitioner, Bartol Sikich; or whether such jurisdiction was exclusive in the United States District Court, in which the petitioner, Bartol Sikich, had filed his petition in bankruptcy.

### II.

Whether property which had been conveyed by a voluntary bankrupt three years and three months before his voluntary adjudication in bankruptcy to a separate legal entity for a valuable consideration, can be recovered by the trustee in bankruptcy as assets of the bankrupt; such conveyance having been made without fraud or fraudulent intent.

## III.

Whether the earnings of the real estate conveyed by a voluntary bankrupt without fraud or fraudulent intent, to a separate legal entity several years prior to his adjudication in bankruptcy may, by the trustee in bankruptcy, be recovered as assets of the bankrupt, apparently, on the assumption that the petitioner, Transfer Realty Company, Inc., did not exist, and was only the *alter ego* of the bankrupt.

Petitioners, Bartol Sikich and Emma Sikich, prosecuted an appeal to the Supreme Court of Indiana. The petitioner, Transfer Realty Company, Inc. was joined as an appellee and filed cross errors (348).

## REASONS RELIED UPON FOR ALLOWANCE OF THE WRIT.

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### A.

The Supreme Court of Indiana has decided a federal question of substance in a way probably not in accord with the applicable decisions of this court, in that it decided that a state *nisi prius* court has jurisdiction of an action by a trustee in bankruptcy wherein plaintiff's complaint alleges that the assets sought to be recovered are actually in the possession and control of the bankrupt and the claim of the Transfer Realty Company, Inc. was colorable only. This holding is not in accord with the holdings of this court in the following cases:

*Miller v. Nugent*, 184 U. S. 1.

*Whitney v. Wenman*, 198 U. S. 593.

*Robertson v. Howard*, 229 U. S. 254.

*Taubel-Scott-Kitzmiller Co., Inc. v. Fox, et al., Trustees, etc.*, 264 U. S. 426.

### B.

The Supreme Court of Indiana has further decided a federal question of substance in direct conflict with the applicable federal statutes and in direct conflict with the applicable decisions of this court, in that it decided that the trustee in bankruptcy of Bartol Sikich, who was adjudicated a voluntary bankrupt on June 1, 1935; could recover as assets of the bankrupt, real estate conveyed by the bankrupt on February 8, 1932 to the Transfer Realty Company, Inc., there being no finding that such

conveyance was made with intent to defraud, hinder or delay creditors, or in fraud of creditors.

U. S. C. A., Title 11, Secs. 107 (e), 110 (a-4).

*Thompson v. Fairbanks*, 196 U. S. 516.

*Coder, Trustee v. Arts*, 213 U. S. 223.

### C.

The Supreme Court of Indiana has further decided a federal question of substance in this cause in direct conflict with the applicable decisions of this court, and the applicable federal statutes when it decided that the respondent trustee in bankruptcy could recover from Bartol Sikich and Emma Sikich the earnings of the real estate transferred by Bartol Sikich, the bankrupt to the Transfer Realty Company, Inc., on February 8, 1932; and real estate acquired by the Transfer Realty Company subsequently thereto and more than three years prior to the adjudication in bankruptcy of Bartol Sikich, such conveyances not having been made with intent and purpose to hinder, delay and defraud creditors, nor in fraud of creditors.

*Thompson v. Fairbanks*, 196 U. S. 516.

*Coder, Trustee v. Arts*, 213 U. S. 223.

U. S. C. A., Title 11, Secs. 107 (e), 110 (a-4).

WHEREFORE, your petitioners respectfully pray that a Writ of Certiorari issue out of and under the seal of this court, directed to the Supreme Court of the State of Indiana, commanding said court to certify and send to this court, on a day certain to be therein designated, a full and complete transcript of the record and proceedings in the said Supreme Court of Indiana in the cause numbered and entitled on its docket as Number 27854 and entitled: Bartol Sikich and Emma Sikich, Appellants *vs.* Glenn W. Springmann, as Trustee, in the Matter of Bartol Sikich, Voluntary Bankrupt; Transfer Realty Company, Inc.,

Appellees, to the end that this cause may be reviewed and determined by this court as provided for by the statutes of the United States, being Title 28, U. S. C. A., Sec. 344b; that the said opinion and judgment of the Supreme Court of Indiana may be by this court reversed, and for such other and further relief as to this court may seem just and proper.

Dated: August ....., 1943.

OSCAR B. THIEL,  
*Attorney and Counsel for*  
*Petitioners.*

M. WM. MALCZEWSKI,  
*Of Counsel.*